



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 216-99

1 June 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 1 October 1980 for four years at age 19. The record reflects that you served without incident until 2 March 1981 when you received nonjudicial punishment (NJP) for failure to obey a lawful order and being disorderly on station. Punishment consisted of a \$100 forfeiture and three days of restriction and extra duty. The following day, you were counseled regarding the deficiencies in your military behavior and warned that failure to take corrective action could result in discharge under other than honorable conditions.

Thereafter, you were advanced to ENFN (E-3) and served without further incident until 1 June 1983 when you received NJP for a nine hour period of unauthorized absence (UA). Punishment imposed was a suspended reduction in rate to ENFA and 30 days of restriction and extra duty. However, on 16 June 1983, you were advanced to EN3 (E-4).

The record further reflects a UA from 20 March to 2 April 1984, for which no disciplinary action is shown in the record. On 16 May 1984, you received your third NJP for a 26 day period of UA, abandoning watch, missing ship's movement, and disobedience of a petty officer. Punishment consisted of forfeitures of \$100 per month for two months, reduction in rate to ENFN, and 40 days of restriction and extra duty.

On 7 June 1984 you were notified that discharge under other than honorable conditions was being considered by reason of misconduct due to commission of a serious offense. You were advised of your procedural rights, declined to consult with counsel, and waived your right to be represented by counsel and to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended that you be separated under other than honorable conditions. On 13 June 1984, Commander, Naval Military Personnel Command directed discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. You were so discharged on 20 June 1984.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been nearly 16 years since you were discharged. The Board noted your contention that the discharge was unfair given your record of advancements and the fact that you were within three months of the expiration of your enlistment when discharged. The Board concluded that these factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs, two of which were for relatively serious offenses. The Board noted the aggravating factors that you waived your right to an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. The fact that you were within a few months of the expiration of your enlistment did not preclude the commanding officer from discharging you for misconduct. You have provided neither probative evidence nor a persuasive argument in support of your application. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director